

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 11, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS TORRES,

Defendant.

CASE NO. 4:17-cr-6015-EFS-1

**ORDER DENYING DEFENDANT'S
MOTION TO CORRECT OR
REDUCE SENTENCE UNDER 18
U.S.C. § 3582(c)(1)(A)**

Before the Court is Defendant Jesus Torres' Motion to Correct or Reduce Sentence Under 18 U.S.C. § 3582(c)(1)(A).¹ In the motion Mr. Torres does not explain what law or facts he believes support his request for a reduction in sentence. Although the Court views his motion liberally, and considers legal theories in addition to compassionate release under § 3582(c)(1), the Court finds no theory under which Mr. Torres is entitled to relief. The Court therefore denies Mr. Torres' motion.

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¹ ECF No. 295.

I. BACKGROUND

In August 2017, Mr. Torres pleaded guilty to distribution of 5 grams or more of actual (pure) methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii).² While sentencing him in December 2017, the Court found that for purposes of the Guidelines calculation, Mr. Torres qualified as a career offender and had a Criminal History Category VI.³ The Court sentenced Mr. Torres to 180 months' imprisonment.⁴

In mid-December 2017, Mr. Torres filed a Motion to Amend/Correct Judgment pursuant to Federal Rule of Criminal Procedure 35.⁵ The Court denied the motion, noting that even if Mr. Torres were not considered a career offender, it would have still imposed the same 180-month sentence.⁶ Then, starting in late December 2017 and continuing into March 2018, Mr. Torres filed multiple pro se motions, all of which the Court construed as being brought pursuant to 28 U.S.C. § 2255.⁷

² ECF Nos. 64 & 66.

³ ECF Nos. 88, 98, 99.

⁴ ECF No. 98.

⁵ ECF No. 102.

⁶ ECF No. 106.

⁷ See ECF Nos. 120, 156 & 160 (motions); ECF No. 163 (order denying the same).

1 In May 2020, Mr. Torres filed a letter, which the Court construed as a
2 motion seeking compassionate release under 18 U.S.C. § 3582(c)(1)(A) due to
3 COVID-19 and the related health concerns.⁸ The Court denied the motion with
4 right to renew.⁹ In January 2021, Mr. Torres filed another § 3582(c)(1)(A) motion,
5 again citing circumstances related to COVID-19.¹⁰ In addition to other filings, the
6 Court received and considered Mr. Torres' prison and medical records. In March
7 2021, the Court denied the motion on its merits.¹¹

8 Mr. Torres continued to file additional materials related to his request for
9 compassionate release, and in July 2021, he filed a motion for reconsideration of
10 the Court's March 2021 decision.¹² In August 2021, the Court entered a text order
11 denying the motion for reconsideration, finding that Mr. Torres "continue[d] to fail
12 to establish extraordinary and compelling circumstances justifying compassionate
13 release."¹³ The Court also said that if Mr. Torres "successfully sets aside his
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17 ⁸ ECF Nos. 237, 238.

18 ⁹ ECF No. 238.

19 ¹⁰ ECF No. 246.

20 ¹¹ ECF No. 252.

21 ¹² ECF Nos. 255, 256, 259, 260, 266, 270.

22 ¹³ ECF No. 272.

1 underlying predicate offenses, he is free to file a motion arguing that sentencing
2 relief is appropriate.”¹⁴

3 In January 2022, Mr. Torres filed the instant motion.¹⁵ In it, Mr. Torres
4 moves “for a reduction in sentence [p]ursuant to 18 [U.S.C. §] 3582.”¹⁶ As his sole
5 argument, Mr. Torres asserts that the “predicate offenses relied upon in the
6 Presentence Investigation Report, and in computing the sentence imposed have
7 been vacated by the Washington State Supreme Court, as being
8 unconstitutional.”¹⁷

9 At the Court’s instruction, the Federal Defenders Office reviewed the
10 motion, but it determined “it would be unable to assist Mr. Torres.”¹⁸ The Court
11 also provided Mr. Torres with the opportunity and extra time to file additional
12 arguments and/or materials if he wished to proceed with his motion pro se.¹⁹ To
13 date, the Court has not received anything further from Mr. Torres.

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17 ¹⁴ ECF No. 272.

18 ¹⁵ ECF No. 295.

19 ¹⁶ ECF No. 295 at 1.

20 ¹⁷ ECF No. 295 at 1.

21 ¹⁸ ECF Nos. 296, 299.

22 ¹⁹ See ECF Nos. 296, 300.

II. ANALYSIS

Based on the Court's prior analysis and rulings, and for the reasons that follow, the Court finds that Mr. Torres continues to fail to establish extraordinary and compelling circumstances justifying compassionate release under 18 U.S.C. § 3582(c)(1). The Court further finds that relief would be improper under either 18 U.S.C. § 3582(c)(1) or 28 U.S.C. § 2255.

A. **Mr. Torres submitted orders vacating prior state-court convictions.**

In *Blake* the Washington State Supreme Court held that Washington's strict liability drug-possession statute, RCW § 69.50.4013, was unconstitutional because it criminalized unintentional, unknowing possession of controlled substances in violation of the state and federal Due Process clauses.²⁰ Mr. Torres included with his motion copies of two orders issued by the Superior Court of Washington in and for Benton County, each entitled "Order Affording Relief from Judgment Pursuant to *State v. Blake*."²¹

One of the included orders pertains to a 2007 conviction in Benton County Superior Court, case number 05-1-01714-1. In that case, Mr. Torres was convicted of one count of Unlawful Possession of a Controlled Substance (the "2007

²⁰ *State v. Blake*, 197 Wash. 2d 170 (2021).

²¹ ECF No. 295 at 2–9, 10–13. For the purposes of deciding the instant motion, the Court assumes, without finding, that the documents supplied by Mr. Torres are accurate copies of valid and effective state-court orders.

Conviction”).²² The subsequent state-court order, signed in August 2021, states, “The judgment and sentence is hereby set aside, vacated in full, and all charges therein dismissed with prejudice.”²³

In 2013, in Benton County Superior Court case number 12-1-00493-9, Mr. Torres was convicted of one count of First Degree Theft, two counts of Tampering with a Witness, and one count of Unlawful Possession of a Controlled Substance.²⁴ The other order supplied by Mr. Torres, also signed in August 2021, provides that the conviction for the count of Unlawful Possession of a Controlled Substance (the “2013 Conviction”) is “set aside, vacated, and the charges is/are dismissed with prejudice.”²⁵ The order expressly left in place Mr. Torres’ convictions for First Degree Theft and Tampering with a Witness.

B. No relief is warranted under 18 U.S.C. § 3582(c)(1).

Modification of an imposed term of imprisonment is governed by 18 U.S.C. § 3582(c). Section 3582(c)(1) provides as follows:

The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the

²² See ECF No. 88 ¶¶ 175–78.

²³ ECF No. 295 at 10.

²⁴ See ECF No. 88 ¶¶ 200–209.

²⁵ ECF No. 295 at 2, 4.

1 Bureau of Prisons to bring a motion on the defendant's behalf or
2 the lapse of 30 days from the receipt of such a request by the
3 warden of the defendant's facility, whichever is earlier, may reduce
4 the term of imprisonment (and may impose a term of probation or
5 supervised release with or without conditions that does not exceed
6 the unserved portion of the original term of imprisonment), after
7 considering the factors set forth in section 3553(a) to the extent
8 that they are applicable, if it finds that--

9 (i) extraordinary and compelling reasons warrant such a
10 reduction; or

11 (ii) the defendant is at least 70 years of age, has served at least
12 30 years in prison, pursuant to a sentence imposed under
13 section 3559(c), for the offense or offenses for which the
14 defendant is currently imprisoned, and a determination has
15 been made by the Director of the Bureau of Prisons that the
16 defendant is not a danger to the safety of any other person or
17 the community, as provided under section 3142(g);

18 and that such a reduction is consistent with applicable policy
19 statements issued by the Sentencing Commission; and

20 (B) the court may modify an imposed term of imprisonment to the
21 extent otherwise expressly permitted by statute or by Rule 35 of
22 the Federal Rules of Criminal Procedure[.]
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24 As mentioned above, Mr. Torres has provided no new information beyond
25 the vacation of two prior drug-possession convictions to support his request for
26 relief under § 3582(c)(1). And, as discussed further below, the Court finds it would
27 have imposed the same sentence even absent the two prior convictions at issue.
28 The Court therefore finds that their vacation does not amount to the requisite
29 “extraordinary and compelling reasons” to warrant a sentence reduction; nor does
30 such vacation alter the Court’s prior analysis of the applicable § 3553 factors. As
31 such, the Court denies Mr. Torres’ request for compassionate release under
32 § 3582(c)(1).

C. Section 3582(c)(2) does not provide a basis for relief.

Given that Mr. Torres’s sole argument relates to “[t]he predicate offenses relied upon in the Presentence Investigation Report,” in an effort to construe his motion liberally,²⁶ the Court also addresses 18 U.S.C. 3582(c)(2), which provides as follows:

The court may not modify a term of imprisonment once it has been imposed except that--

....

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. [§] 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

When sentencing Mr. Torres and finding he qualified as a “career offender” for purposes of the Guidelines enhancement and calculation, the Court did not rely on the 2007 Conviction or 2013 Conviction—both of which were for drug *possession*. Rather, the career-offender enhancement was based on three different state-court convictions for *delivery* of a controlled substance.²⁷ The Court did, however, assign two criminal history points to the 2007 Conviction and three points to the 2013

²⁶ See *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

²⁷ See ECF No. 88 ¶¶ 65–69.

1 Conviction when calculating Mr. Torres' criminal history category.²⁸ But even
2 omitting those convictions, Mr. Torres would still have had 23 criminal history
3 points, leaving his criminal history category—and the resulting Guidelines
4 recommended sentencing range—unchanged.²⁹

5 More importantly for purposes of § 3582(c)(2), Mr. Torres does not cite to any
6 change in the sentencing Guidelines. Section 3582(c)(2) allows the Court to
7 consider only amendments to the sentencing Guidelines *by the Sentencing*
8 *Commission*, not changes to Guidelines calculations based on subsequent case law
9 or the vacation of underlying convictions as Mr. Torres seemingly argues here.³⁰
10 Even excluding the two convictions at issue—and/or even if Mr. Torres were no
11 longer considered a career offender—such changes would not stem from an
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17 ²⁸ ECF No. 88 at 175, 200; ECF No. 99.

18 ²⁹ See USSG § 5A (Sentencing Table) (providing that 13 or more criminal history
19 points results in a CHC of VI).

20 ³⁰ See 18 U.S.C. § 3582 (stating a court may modify a term of imprisonment for a
21 defendant who was sentenced “based on a sentencing range that has subsequently
22 been lowered by the Sentencing Commission”).
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1 amendment to the sentencing Guidelines, and the Court would have imposed the
2 same sentence regardless.³¹ Thus, § 3582(c)(2) provides no basis for relief.

3 **D. Mr. Torres did not receive leave to file a successive § 2255 motion.**

4 Finally, it appears from his motion that Mr. Torres may intend to seek the
5 kind of relief governed by 28 U.S.C. § 2255, which is the usual mechanism by
6 which a federal prisoner may challenge the legality of his confinement.³² After all,
7 as a general matter, “a defendant given a sentence enhanced for a prior conviction
8 is entitled to a reduction if the earlier conviction is vacated.”³³ Here, however, the
9 Court did not enhance Mr. Torres’ sentence based on either of the vacated state-
10 court convictions he now raises. And, in any event, because this would not be
11 Mr. Torres’ first § 2255 motion, the Court cannot properly consider granting any
12 related relief.

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17 ³¹ See ECF No. 99 (The Court stating in its Statement of Reasons for Mr. Torres’
18 sentence that “even if he is not a career offender, in which case the guideline range
19 would be from 151 to 188 months, the Court would nonetheless impose the same
20 sentence.”).

21 ³² See *Marrero v. Ives*, 682 F.3d 1190, 1192 (9th Cir. 2012).

22 ³³ *Johnson v. United States*, 544 U.S. 295, 303 (2005).

1 The court of appeals must grant the prisoner leave to file a “second or
2 successive” § 2255 motion before a district court may entertain such motion.³⁴ This
3 usually requires the prisoner to show that his claim relies on “a new rule of
4 constitutional law, made retroactive to cases on collateral review by the Supreme
5 Court, that was previously unavailable.”³⁵ Although this Court lacks jurisdiction to
6 rule on the matter, it observes that Mr. Torres has not made a prima facie showing
7 that the United States Supreme Court has announced any new constitutional rule
8 applicable to his case.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant’s Motion to Correct or Reduce Sentence Under 18 U.S.C.

11 § 3582(c)(1)(A), **ECF No. 295**, is **DENIED**.

12 2. To the extent Defendant’s motion can be read as seeking relief under
13 28 U.S.C. § 2255, the Court declines to issue a certificate of
14 appealability.³⁶

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18 ³⁴ See 28 U.S.C. §§ 2244(b)(3)(C), 2255(h); *United States v. Buenrostro*, 638 F.3d
19 720, 723 (9th Cir. 2011).

20 ³⁵ 28 U.S.C. § 2255(h)(2).

21 ³⁶ See 28 U.S.C. § 2253(c) (allowing such a certificate “only if the applicant has
22 made a substantial showing of the denial of a constitutional right”).

3. This case shall remain **CLOSED**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to Defendant and all counsel.

DATED this 11th day of May 2022.

Edward F. Shea

EDWARD F. SHEA
Senior United States District Judge